IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 650 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
G M PARIKH - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1. This appeal by the State of Gujarat for enhancement of the sentence is directed against impugned

judgment and order dated 5th June, 1996 rendered in in Criminal Case No.4304/1990 by the Learned Learned Judicial Magistrate, First Class, Ankleshwar, wherein the respondent-accused, who came to be tried for the alleged offences under Section 92 of the Factories Act, 1948 (for short ”the Act”), on pleading guilty was convicted for the same and sentenced to pay of Rs.10,000/-, in default, to undergo R.I. for 1 month.

2. The brief facts of the prosecution case are as under;

2.1 According to Mr.K.U. Mistry, the Factor Inspector, on 21st, 22nd, 23rd, 27th and 30th August, 1990, when he visited 'Ashok Organic Industries Ltd.' at 318-319, G.I.D.C. Ankleshwar, Bharuch at about 2:15 hours, one worker named Babu Methew had met with fatal accident while on work and died on 11.08.1990. Thus, according to the Factor Inspector, the respondent-accused has committed breach of Section 37(4) of the Factories Act, which is punishable under Section 92 of the said Act.

2.2 The accused pleaded guilty to the charge and admitted to have committed the offence as alleged against him and, therefore, the Learned Learned Judicial Magistrate, First Class, Ankleshwar vide

impugned judgment and order convicted the respondent-accused as stated hereinabove.

2.3 Being aggrieved by the Judgment and Order of conviction and sentence awarded by the Court below, the appellant-State of Gujarat has preferred this appeal.

3. Mr.H.L. Jani, the Learned Additional Public Prosecutor has placed reliance upon the judgment reported in GLR 1993(2) 1119 in the case of State of Gujarat V/s. B.S. Thakkar. Mr.Jani while challenging the impugned judgment and order of unduly lenient order of sentence submitted that the same was *ex-facie* illegal being contrary to the minimum sentence prescribed in proviso to Section 92 of the said Act, which reads as under :-

> " xxx xxx xx
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> Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under Sec.87 has resulted in any accident causing death or serious bodily injury, the fine shall not be less than (twenty five thousand rupees) in the case of an accident causing serious bodily injury."

4. Raising the abovesaid contentions, Mr.Jani has urged that the present appeal deserves to be allowed and the sentence awarded to the respondent-accused may be enhanced.

5. In above view of the matter, I am of the opinion that the trial Court passed order of sentence which is not only unduly, lenient and manifestly illegal, but is also perverse. This is not only ridiculous but the mockery of justice and, hence, the matter is required to be remanded back to the trial Court.

6. In the result, though the appeal for enhancement of sentence fails, as observed above, in the facts and circumstances of the case, the matter is remanded to the trial Court with a direction to hear and decide the same afresh on merits and in accordance with law.

Sd/-
(K.S.JHAVERI, J.)

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